REMARKS

Claims 1-44 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Section 103(a) Rejection:

The Office Action rejected claims 1-44 under 35 U.S.C. § 103(a) as being unpatentable over Andrews et al. (U.S. Patent 6,285,986) (hereinafter "Andrews") and Treyz et al. (U.S. Patent 6,587,835) (hereinafter "Treyz"). Applicant respectfully traverses this rejection for at least the following reasons.

The cited art fails to teach or suggest "in response to said detecting a commitment to purchase, making an offer to said purchaser to accept or reject a contract for negotiating said improved terms within a specified time," as recited in claim 1. Andrews teaches a bundle system wherein members are able to view, select, and purchase bundles generated and posted by the bundle vendors (Andrews, Abstract). When vendors enter products that are available to be included in bundles, vendors may indicate whether they are willing to negotiate terms such as price or quantity if the vendors' products/services are reviewed and chosen for inclusion within a bundle (Andrews, col. 8, lines 9-10 and 42-44). However, this indication of a willingness to "negotiate" with a bundle ***vendor*** about the price or quantity of a product/service when the product/service is selected for inclusion in a bundle neither teaches nor suggests "**offering a purchaser a contract** for negotiating said improved terms" "**in response to detecting an issuance of a commitment to purchase,**" as recited in claim 1.

In Andrews, the purchaser of a bundle is not presented with any offer to negotiate improved terms. The indication of a willingness to negotiate mentioned in col. 8, lines 41-59 is between the product/service vendor and the bundle vendor, not the bundle purchaser. The willingness to negotiate in Andrews is performed "if and when this product/service is reviewed and chosen for inclusion within a bundle" by a bundle

vendor. Any potential bundle purchaser is not involved at this point. Andrews only refers to possible negotiations between the bundle vendor and the vendors of products/services to be included in bundles.

Moreover, Fig. 4 of Andrews clearly shows the indication of a willingness to negotiate as part of the bundle product entry process described at col. 8, line 8 – col. 9, line 35. *This process is performed before a bundle including the product/service is even created.* **Thus, the willingness to negotiate in Andrews clearly cannot be performed in response to said detecting a commitment to purchase.**

Furthermore, the willingness to negotiate in Andrews is not **a contract for negotiating improved terms within a specified time.** The bundle vendor and product/service vendor in Andrews do not enter into a contractual agreement for negotiating. The indication of willingness to negotiate in Andrews is not an offer for a binding contract for negotiating. Furthermore, the willingness to negotiate in Andrews is not described as being limited to be performed **within a specified time**.

In the Response to Arguments section of the Final Office Action, the Examiner repeats his assertion that the willingness to negotiate in Andrews teaches making an offer to the purchaser to accept or reject a contract for negotiating the improved terms within a specified time and cited column 8, lines 45-67, column 2, lines 37-48. However, column 8, lines 45-67 of Andrews simply describes that a product/service vendor may indicate whether the vendor is willing to negotiate terms if the vendor's product/service is selected for inclusion in a bundle. As discussed above, a vendor's willingness to negotiate terms does not include making an offer to a purchaser to accept or reject a contract for negotiating the improved terms within a specified time. The Examiner specifically refers to column 8, lines 50-52, where Andrews teaches, "... the vendor is prompted to determine whether or not the vender is willing to negotiate on quantity of the product/service available for a bundle." However, prompting a vendor to determine whether or not that vendor is willing to negotiate is the complete opposite of making an offer *to the purchaser* to accept or reject a contract for negotiating, as is recited in claim

1. Also, prompting for a willingness to negotiate is not the same as (or even suggestive of) making an offer to the purchaser to accept or reject a contract for negotiating

The Examiner also cites column 2, lines 37-48 and specifically cites lines 44-47 where Andrews teaches, "[o]n auction related internet sites, if the user has the highest bid at the end of the specified time period, then the user also enters the payment and shipping information." This passage of Andrews has no relevance whatsoever to making an offer to the purchaser to accept or reject a contract for negotiating the improved terms within a specified time. Bidding in an online auction has absolutely nothing to do with making or receiving any offer to accept or reject a contract for negotiating improved terms.

In further regard to claim 1, the cited art fails to anticipate, teach, or suggest "**if said purchaser accepts said offer: conducting a search for said improved terms within said specified time; receiving said improved terms within said specified time; and executing said contract.**" Column 8, lines 45-67 of Andrews simply describes that a product/service vendor may indicate whether the vendor is willing to negotiate terms if the vendor's product/service is selected for inclusion in a bundle. Column 2, lines 37-48 of Andrews simply describe that a *user* may search for and obtain information about products or services offered by a retail-oriented internet site (col. 2, lines 37-48). There is clearly no description in Andrews of a purchaser accepting a contract for negotiating improved terms within a specified time. Nor is there any description in Andrews of conducting a search for said improved terms within said specified time; receiving said improved terms within said specified time; and executing said contract.

Additionally, Andrews combined with Treyz fails to teach or suggest detecting an issuance of a commitment to purchase with associated terms for the product or service being purchased by a purchaser using an Internet web site. Treyz teaches a system in which a handheld computing device may be used to provide a user with shopping assistance when physically present, in person, in a retail shopping mall (Abstract). The Examiner cites column 1, lines 49-52 where Treyz describes how users of his handheld device may make financial commitments toward purchases prior to completing purchase

transactions. The Examiner also cites column 11, line 63 – column 1, line 10 describing how manufactures may provide a discount or otherwise subsidize a purchase if an item is purchased from that manufacturer. Neither of the cited passages nor any other portion of Treyz mentions anything about detecting an issuance of a commitment to purchase with associated term for the product or service being purchased *by a purchaser using an Internet web site*, as recited in Claim 1. Treyz is concerned with providing shopping assistance to shoppers in shopping malls, not purchasers using an Internet web site. Furthermore, the shopping assistance provided by Treyz has absolutely no bearing on Andrews' automated negotiations for combining products or services of venders to be sold as a bundle. Even if Andrews was modified according to Treyz so that a purchaser of a bundle made a commitment to purchase, such a modification would have nothing to do with the teachings of Andrews relied upon by the Examiner pertaining to the interaction between the product/service vendor and the bundle vendor that is part of the bundle product entry process and does not occur at the time of purchase.

For at least the reasons given above, the rejection of claim 1 is not supported by the prior art and removal thereof is respectfully requested. Similar arguments as those above regarding claim 1 also apply to independent claims 14, 28, 29, 40, 41, 42 and 44.

Regarding claim 2, Andrews in view of Treyz fails to teach or suggest that the detecting comprising detecting the purchaser entering a credit card number or pre-paid account number of a gift certificate number. The Examiner cites column 2, lines 37-48 and argues, "Andrews discloses a method of payment and shipping information, it is be obvious to realize that the form of payment can also include payment by credit card or gift certificate or account number." Andrews describes how if a user decides to purchase a product from an internet site, the user then enters payment and shipping information (column 2, lines 39-44). Merely mentioning that a user may enter payment and shipping information does not disclose any and every possible form of payment. Nowhere does Andrews mention a user entering credit card numbers, account numbers, or gift certificate numbers. The Examiner is merely using hindsight analysis to include the limitations of claim 2 in Andrews' system.

For at least the reasons given above, the rejection of claim 2 is not supported by the prior art and removal thereof is respectfully requested. Similar arguments as those above regarding claim 2 also apply to claims 15 and 31.

Regarding claim 3, Andrews in view of Treyz fails to teach or suggest that detecting an issuance of a commitment to purchase with associated terms for said product or service being purchased by a purchaser using an Internet web site comprises detecting the purchaser viewing a particular web page. The Examiner cites column 1, line 65 – column 2, line 14 of Andrews that describes how someone uses a web browser to access information on the Internet. Nowhere does the passage mention that detecting an issuance of a commitment to purchase comprises *detecting* a purchaser viewing a particular web page. A simple description of how web browsers work to access information on the Internet does not in any way suggest detecting a purchaser viewing a particular web page as part of detecting an issuance of a commitment to purchase with associated terms for a product or service being purchased by a purchaser using an Internet web site. The cited passage does not even mention online purchasing, but instead describes generally how web browsers and hyperlinks work. For at least the reasons given above, the rejection of claim 3 is not supported by the prior art and removal thereof is respectfully requested. Similar arguments as those above regarding claim 3 also apply to claims 16 and 32.

Regarding claim 4, Andrews in view of Treyz fails to teach or suggest that detecting an issuance of a commitment to purchase with associated terms for said product or service being purchased by a purchaser using an Internet web site comprises detecting said purchaser accessing a particular URL. As with the rejection of claim 3, discussed above, the Examiner cites column 1, line 65 – column 2, line 14 of Andrews that describes how someone uses a web browser to access information on the Internet. However, the cited passage does not describe that detecting an issuance of a commitment to purchase comprises *detecting* a purchaser accessing a particular URL. A simple description of how web browsers work to access information on the Internet does not

imply detecting a purchaser accessing a particular URL as part of detecting an issuance of a commitment to purchase with associated terms for a product or service being purchased by a purchaser using an Internet web site. The cited passage does not even mention online purchasing, but instead describes generally how web browsers and hyperlinks work. For at least the reasons given above, the rejection of claim 4 is not supported by the prior art and removal thereof is respectfully requested. Similar arguments as those above regarding claim 4 also apply to claims 17 and 33.

Regarding claim 5, Andrews in view of Treyz fails to teach or suggest that detecting an issuance of a commitment to purchase with associated terms for said product or service being purchased by a purchaser using an Internet web site comprises detecting said purchaser clicking an icon to confirm an order. As with the rejection of claim 3, discussed above, the Examiner cites column 1, line 65 – column 2, line 14 of Andrews that describes how someone uses a web browser to access information on the Internet. However, the cited passage does not describe that detecting an issuance of a commitment to purchase comprises *detecting* a purchaser clicking an icon to confirm an order. A simple description of how web browsers work to access information on the Internet does not imply detecting a purchaser clicking an icon to confirm an order as part of detecting an issuance of a commitment to purchase with associated terms for a product or service being purchased by a purchaser using an Internet web site. The cited passage does not even mention online purchasing, but instead describes generally how web browsers and hyperlinks work. For at least the reasons given above, the rejection of claim 5 is not supported by the prior art and removal thereof is respectfully requested. Similar arguments as those above regarding claim 5 also apply to claims 18 and 34.

Regarding claim 6, Andrews in view of Treyz fails to teach or suggest that making an offer to the purchaser comprises displaying the contract on a screen of a computer system used by the purchaser to purchase the product over the Internet. The Examiner cites column 1, line 65 – column 2, line 14 of Andrews. However, this portion of Andrews merely describes how someone uses a web browser to access information on a server over the internet. This passage has no relevance to displaying a contract for

negotiating improved terms within a specified time on a screen of a computer system in response to detecting an issuance of a commitment to purchase. The Examiner has provided no explanation supporting his assertion that this passage teaches the limitations of claim 6. The cited passage does not mention a contract for negotiating improved terms nor about displaying any contract on a screen of a computer system. Nor does the cited passage have anything to do with an offer made in response to detecting an issuance of a commitment to purchase. For at least the reasons given above, the rejection of claim 6 is not supported by the prior art and removal thereof is respectfully requested. Similar arguments as those above regarding claim 6 also apply to claims 19 and 35.

Regarding claim 7, Andrews in view of Treyz fails to teach or suggest that if the purchaser rejects the contract: executing the commitment to purchase. The Examiner cites column 1, line 65 – column 2, line 14. However, this portion of Andrews merely describes how someone uses a web browser to access information on a server over the internet. This passage has no relevance to executing a commitment to purchase if a purchaser rejects a contract for negotiating improved terms within a specified time. Merely describing how to use a web browser does not suggest that if the purchaser rejects the contract, executing the commitment to purchase. For at least the reasons given above, the rejection of claim 7 is not supported by the prior art and removal thereof is respectfully requested. Similar arguments as those above regarding claim 7 also apply to claim 20.

Regarding claim 8, Andrews in view of Treyz fails to teach or suggest that the commitment to purchase includes a purchase order for which payment has been guaranteed by the purchaser. The Examiner cites column 2, lines 37-48 and argues, "Andrews discloses a method of payment and shipping information, it is be obvious to realize that the form of payment can also include payment by credit card or gift certificate or account number." The Examiner makes no mention of the limitations of claim 8. Presumably, the Examiner contends that it is also obvious that the form of payment can also include a purchase order as recited in claim 8. However, the cited passage only describes how if a user decides to purchase a product from an internet site, the user then

enters payment and shipping information (column 2, lines 39-44). Merely mentioning that a user may enter payment and shipping information does not disclose any and every possible form of payment. Nowhere does Andrews mention a purchase order for which payment has been guaranteed by the purchaser. The Examiner is merely using hindsight analysis to include the limitations of claim 8 in Andrews' system.

For at least the reasons given above, the rejection of claim 8 is not supported by the prior art and removal thereof is respectfully requested. Similar arguments as those above regarding claim 8 also apply to claims 21 and 36.

Regarding claim 10, Andrews in view of Treys does not teach or suggest that making an offer to the purchaser comprises: reading information associated with commitment to purchase; determining if commitment to purchase represents an area of interest for an improved terms service provider; if commitment to purchase represents an area of interest for the improved terms service provider, making the offer to the purchaser.

The Examiner does not provide any specific arguments or to cite any particular passages of prior art regarding the rejection of claim 10. Instead, the Examiner merely lists claim 10 with the rejection of claim 1 without making any particular reference or arguments regarding the limitations of claim 10. Therefore, the Examiner has not even attempted to establish a *prima facie* rejection of the specific limitations of claim 10. Thus, the rejection is improper.

Furthermore, neither Andrews, nor Treyz, nor any combination of the two, teaches anything regarding the specific limitations of claim 10. As discussed above, Andrews teaches a bundle system wherein members are able to view, select, and purchase bundles generated and posted by the bundle vendors (Andrews, Abstract). When vendors enter products that are available to be included in bundles, vendors may indicate whether they are willing to negotiate terms such as price or quantity if the vendors' products/services are reviewed and chosen for inclusion within a bundle

(Andrews, col. 8, lines 9-10 and 42-44). Treyz teaches a system for providing shopping assistance in shopping malls using a handheld computing device. Treyz is not concerned with online purchasing at all. Thus, both Andrews and Treyz fail to teach or suggest anything regarding reading information associated with commitment to purchase, determining if commitment to purchase represents an area of interest for an improved terms service provide, or if commitment to purchase does represent an area of interest for the improved terms service provider, making the offer to the purchaser.

For at least the reasons given above, the rejection of claim 10 is not supported by the prior art and removal thereof is respectfully requested. Similar arguments as those above regarding claim 10 also apply to claims 23 and 37.

Regarding claim 11, Andrews in view of Treyz fails to teach wherein conducting said search for said improved terms comprises conducting an auction amongst a plurality of suppliers for said product. As with the rejection of claim 10 above, the Examiner fails to provide any arguments or cite any particular portions of the prior art regarding the rejection of claim 11. Instead, the Examiner just lists claim 11 as rejected with the rejection of claim 1 without any reference to the specific limitations of claim 11. Therefore, the Examiner has not even attempted to establish a *prima facie* rejection of the specific limitations of claim 11. Thus, the rejection is improper.

Additionally, neither Andrews, nor Treyz, nor any combination of the two, discloses wherein conducting the search for the improved terms comprises conducting an auction amongst a plurality of suppliers for the product. Andrews teaches that suppliers may negotiate terms for products to be included in a bundle (Andrews, col. 8, lines 9-10 and 42-44). However, the negotiating in Andrews has nothing to do with conducting an auction amongst a plurality of supplies as part of conducting a search for improved terms. For a more detailed discussion regarding the teaching of Andrews, please refer to the discussion above regarding the rejection of claim 1.

The rejection of claim 11 is clearly not supported by the prior art, and since the Examiner has failed to provide a proper rejection, removal of claim 11 is respectfully requested. Similar arguments as those above regarding claim 11 also apply to claims 24 and 38.

Regarding claim 12, Andrews in view of Treyz fails to disclose or suggest that the contract comprises entering a legal contract with the purchaser to supply the product under the improved terms. As with the rejections of claim 10 and 11, discussed above, the Examiner has failed to provide a proper rejection of claim 12 by failing to provide any specific arguments or to cite any particular passages of prior art that teach or suggest the specific limitations of claim 12. Instead, the Examiner just lists claim 12 as rejected with the rejection of claim 1. Therefore, the Examiner has not even attempted to establish a *prima facie* rejection of the specific limitations of claim 12. Thus, the rejection is improper.

Furthermore, Andrews and Treys, either singly or in combination, fail to disclose anything regarding entering a legal contract with the purchaser to supply the product under improved terms. As discussed above, Andrews only deals with negotiations among suppliers to provide bundles of products or services. Nowhere does Andrews mention anything regarding a legal contract with a purchaser. Treyz is only concerned with providing shopping assistance in shopping malls and has nothing to do with legal contracts with purchasers to supply products under improved terms. Thus, no combination of Andrews and Treys teaches the limitations recited in claim 12. Therefore, the rejection of claim 12 is not supported by the prior art and removal thereof is respectfully requested. Similar arguments as those above regarding claim 12 also apply to claim 25.

Regarding claim 30, Andrews in view of Treyz fails to disclose or suggest that if the original purchase is not available after the searching is complete, purchasing the particular item for the purchaser at another price and charging the purchaser the particular price. The Examiner fails to point out any particular passage of the prior art that teaches

or suggests the limitations of claim 30. In fact, the Examiner fails to make any argument regarding the specific limitations of claim 30. Therefore, the Examiner has not even attempted to establish a *prima facie* rejection of the specific limitations of claim 30. Thus, the rejection is improper.

Moreover, Andrews and Treyz, whether singly or in combination, absolutely fail to teach or suggest purchasing a particular item for the purchaser at another price and charging the purchaser the particular price if the original purchase is not available after the searching is complete. Andrews is concerned with negotiations among suppliers to provide bundles of products or services while Treyz only deals with a handheld computing device to provide shopping assistance to shoppers in shopping malls. Nowhere does Andrews or Treyz mention anything regarding the limitations of claim 30. Thus, the rejection of claim 30 is not supported by the prior art and its removal is respectfully requested.

Applicants also assert that numerous other ones of the dependent claims recite further distinctions over the cited art. However, since the independent claims have been shown to be patentably distinct, a further discussion of the dependent claims is not necessary at this time.

CONCLUSION

Applicant submits the application is in condition for allowance, and notice to that effect is respectfully requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicant hereby petitions for such extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5596-00300/RCK.

Also enclosed herewith are the following items:

☒ Return Receipt Postcard

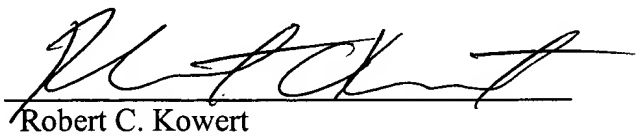
☒ Petition for Extension of Time

☒ Notice of Appeal

☐ Fee Authorization Form authorizing a deposit account debit in the amount of $ for fees ( ).

☐ Other:

Respectfully submitted,



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